

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission’s Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission’s Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service Amendment)	
of Parts 21 and 74 to Engage in Fixed Two-Way)	
Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission’s Rules with Regard to Licensing in)	RM-9718
the Multipoint Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

**OPPOSITION AND COMMENTS REGARDING PETITIONS FOR
RECONSIDERATION**

Pursuant to Section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ Choice Communications, LLC (“Choice”) submits this opposition and

¹ 47 C.F.R. § 1.429. All petitions for reconsideration filed on January 10, 2005, in this proceeding will hereinafter be short cited.

comments regarding certain petitions for reconsideration, filed on January 10, 2005, of the *BRS/EBS Order*.²

The record in this proceeding reflects overwhelming support for allowing wireless multichannel video programming distribution (“MVPD”) operators to opt out of the new band plan without prior approval, in lieu of requiring these operators to submit individual waiver requests that must be processed by the Commission.³ An opt-out will serve the public interest by allowing MVPD operators that have made substantial investments and have built out their systems in reliance upon the Commission’s rules to continue offering existing and new services.

If the Commission adopts an MVPD opt-out provision, as many petitioners have urged, it must focus on facilitating the relocation of incumbent operations at MDS Channels 1 and 2/2A (at 2150-2162 MHz). Notably, WCAI and WATCH TV proposed that, if an MVPD opt-out is permitted, MDS Channel 1 and 2/2A incumbents should be relocated to 2496-2500 MHz and 2686-2690 MHz, respectively.⁴ Although this proposal seems reasonable, the Commission should not mandate relocation in all cases, but rather give incumbents the option either to relocate to 2496-2500 MHz and 2686-2690 MHz or to obtain auction bidding credits to acquire spectrum licenses comparable in value to their original licenses. Moreover, in the event that an incumbent opts to relocate to 2496-2500 MHz and 2686-2690 MHz, its assigned spectrum would

² See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (“*BRS/EBS Order*”).

³ See, e.g., Wireless Communications Association International, Inc. (“WCAI”) Petition at 30-34; WATCH TV Petition at 4-10; Blooston *et al.* Petition at 9; BRS Rural Advocacy Group Petition at 9-14; Central Texas Petition at 7-13; Choice Petition at 3-7. The record also reflects near unanimous support for transitioning on a Basic Trading Area, rather than Major Economic Area, basis. Accordingly, the Commission should reverse its decision to require MEA transitioning. See, e.g., Choice Petition at 7-8; WCAI Petition at 7-16; Catholic Television Network and National ITFS Association (“CTN and NIA”) Petition at 4.

⁴ See WCAI Petition at 35-37; WATCH TV Petition at 11-13.

be reduced by 2 to 4 MHz. To compensate the incumbent for this spectrum reduction, the FCC should grant a bidding credit comparable to the value of the spectrum shortfall.

Additionally, WATCH TV and Sprint Corporation (“Sprint”) requested that the Commission require new advanced wireless service (“AWS”) entrants to pay the costs of relocating MDS Channel 1 and 2/2A incumbents.⁵ Although the Commission previously proposed that displaced MDS incumbents would be entitled to comparable facilities or adequate replacement spectrum,⁶ it has not yet adopted a comprehensive plan for relocating and reimbursing displaced MDS Channel 1 and 2/2A incumbents.⁷ Until this issue is resolved, Channel 1 and 2/2A incumbents will lack the regulatory certainty that they need to commence the relocation process. WATCH TV’s and Sprint’s proposals are consistent with the Commission’s existing relocation policies and accordingly should be adopted in order to facilitate the orderly relocation of displaced incumbents.

Furthermore, the Commission should grant the Independent MMDS Coalition (“IMLC”) request that the Commission clarify the rules to allow operations in the guardbands and the assignment of guardband spectrum to adjacent-channel licensees.⁸ Addressing the guardband issues raised by the IMLC will be crucial for Choice and other MVPD operators, particularly if the Commission declines to adopt an MVPD opt-out.

⁵ See WATCH TV Petition at 12-13; Sprint Petition at 7-8.

⁶ See *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Service*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223, ¶ 72 (2003).

⁷ Although the Commission adopted service rules for AWS in the 2110-2155 MHz band, it declined at that time to address reimbursement and band clearance issues regarding the 2150-2155 MHz segment. See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162 (2003).

⁸ See IMLC Petition at 5-6.

Finally, the Commission should not consider the petition for reconsideration filed jointly by Catholic Television Network (“CTN”) and the National ITFS Association (“NIA”), requesting the elimination of the wireless cable exception in its entirety.⁹ The Commission issued a further notice of proposed rulemaking (“FNPRM”) seeking public comment on this issue,¹⁰ and a number of parties, including Choice, filed responsive comments urging the Commission to retain the wireless cable exception. The FNPRM is the proper forum for the Commission to address this issue.

Respectfully submitted,

CHOICE COMMUNICATIONS, LLC

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Its Attorneys

Date: February 22, 2005

/s/ Douglas J. Minster

Douglas J. Minster
Vice President and General Counsel
Atlantic Tele-Network, Inc.
9719 Estate Thomas
St. Thomas
U.S. Virgin Islands 00802

⁹ See CTN and NIA Petition at 22.

¹⁰ See *BRS/EBS Order*, ¶ 350.

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that a copy of the foregoing Opposition and Comments regarding Petitions for Reconsideration has been served this 22nd day of February 2005 by electronic mail on the following:

Bryan Tramont
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: bryan.tramont@fcc.gov

John Branscome
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
E-Mail: john.branscome@fcc.gov

Paul Margie
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: paul.margie@fcc.gov

Sam Feder
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: sam.feder@fcc.gov

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: barry.ohlson@fcc.gov

John Muleta
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: john.muleta@fcc.gov

Catherine Seidel
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: cathy.seidel@fcc.gov

D'Wana Terry
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: dwana.terry@fcc.gov

Uzoma Onyeije
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: uzoma.onyeije@fcc.gov

John Schauble
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: john.schauble@fcc.gov

Nancy Zaczek
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
E-Mail: nancy.zaczek@fcc.gov

Genevieve Ross
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
E-Mail: genevieve.ross@fcc.gov

Stephen Zak
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
E-Mail: stephen.zak@fcc.gov

William Huber
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A760
Washington, DC 20554
E-Mail: william.huber@fcc.gov

Erik Salovarra
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A760
Washington, DC 20554
E-Mail: Erik.Salovaara@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW
Courtyard Level
Washington, DC 20554
fcc@bcpiweb.com

/s/ Theresa Rollins
Theresa